



HIGH COURT OF AUSTRALIA

Public Information Officer

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MOHAMMAD ARIF RUHANI v DIRECTOR OF POLICE (THROUGH THE SECRETARY OF JUSTICE AS DIRECTOR OF PUBLIC PROSECUTOR) [No 2]

The High Court of Australia today upheld a decision of the Supreme Court of Nauru which in turn upheld the lawfulness of Mr Ruhani's detention in Nauru.

Mr Ruhani is an Afghan national of apparently Hazara ethnicity. He was among a group of 319 asylum seekers rescued by the Norwegian vessel MV Tampa in the Indian Ocean in August 2001. The group was denied access to Australia to make refugee claims and was transferred to an Australian navy ship and taken to Nauru in December 2001. Mr Ruhani was then aged about 18. Nauru issued a special-purpose visa for entry and stay in Nauru on humanitarian grounds. The visa, renewed every six months, was subject to certain restrictions governing residence and movement within Nauru. Australia's Immigration Department found that Mr Ruhani was not a person in need of protection under the Refugees Convention, a decision affirmed on review.

In the Supreme Court of Nauru, Chief Justice Barry Connell heard an application for an order for Mr Ruhani's release based on a claim that his detention was unlawful according to the law of Nauru. Chief Justice Connell discharged the order nisi, holding that Nauru's principal immigration officer (PIO) could issue a special-purpose visa under Nauru's *Immigration Act* without an application by or the consent of the visa holder. He held that asylum seekers who entered and were accommodated on Nauru in accordance with the conditions in the special-purpose visa were not unlawfully detained. Chief Justice Connell also rejected a submission that the visa went beyond the power conferred upon the PIO to impose such conditions as the PIO thought fit because they constituted a form of punishment that could only be imposed by a court.

In the High Court, Mr Ruhani sought a declaration that the visa was invalid and of no effect and sought an order absolute for habeas corpus directed to the Director of Police to order Mr Ruhani's release from detention. He also reargued his submission that the PIO exceeded their power to attach conditions to visas. The High Court held that the attack upon the validity of the conditions was rightly rejected by the Supreme Court because it was for Nauru, as a sovereign state, to annex what conditions it wished to permission given to an alien to enter it. Mr Ruhani objected to the visa being issued as he had neither applied for nor consented to it, and no-one was authorised to apply on his behalf. The High Court noted that Nauru's Immigration Regulations do not state that no visa may be issued except upon application, but instead provide for a variety of visa classifications to cover many circumstances, including for emergency entrants and entrants without passports.

The Court, by a 4-1 majority, dismissed the appeal and held that Mr Ruhani had shown no error in Chief Justice Connell's decision.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*